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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.

INC, individually and on behalf of all )

others similarly situated, ) **CLASS ACTION**

)

Plaintiff, ) **COMPLAINT FOR VIOLATIONS**

) **OF:**

vs. )

) 1. NEGLIGENT VIOLATIONS

EGUMBALL, INC.; and DOES 1 ) OF THE TELEPHONE

through 10, inclusive, ) CONSUMER PROTECTION

) ACT [47 U.S.C. §227(b)]

Defendant. ) 2. WILLFUL VIOLATIONS

) OF THE TELEPHONE

) CONSUMER PROTECTION

) ACT [47 U.S.C. §227(b)]

) 3. NEGLIGENT VIOLATIONS

) OF THE TELEPHONE

) CONSUMER PROTECTION

) ACT [47 U.S.C. §227(c)]

) 4. WILLFUL VIOLATIONS

) OF THE TELEPHONE

) CONSUMER PROTECTION

) ACT [47 U.S.C. §227(c)]

) **DEMAND FOR JURY TRIAL**

)

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),  
2 individually and on behalf of all others similarly situated, alleges the following  
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of EGUMBALL, INC. (“Defendant”),  
8 in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s  
9 cellular telephone, as well as on Plaintiff’s residential telephone, in violation of the  
10 Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related  
11 regulations, specifically the National Do-Not-Call provisions, thereby invading  
12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
15 a California corporation with its principle place of business also in California, seeks  
16 relief on behalf of a Class, which will result in at least one class member belonging  
17 to a different state than that of Defendant, a California Corporation. Plaintiff also  
18 seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which,  
19 when aggregated among a proposed class in the thousands, exceeds the  
20 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity  
21 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005  
22 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Central  
24 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does  
25 business within the State of California and Plaintiff resides within the County of  
26 Alameda.

27 **PARTIES**

28 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),

1 is a roofing and plumbing business in Emeryville, California and is a “person” as  
2 defined by *47 U.S.C. § 153 (39)*.

3 5. Defendant, EGUMBALL, INC. (“Defendant”), is an internet  
4 marketing company, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

5 6. The above named Defendant, and its subsidiaries and agents, are  
6 collectively referred to as “Defendants.” The true names and capacities of the  
7 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
8 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
9 names. Each of the Defendants designated herein as a DOE is legally responsible  
10 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
11 Complaint to reflect the true names and capacities of the DOE Defendants when  
12 such identities become known.

13 7. Plaintiff is informed and believes that at all relevant times, each and  
14 every Defendant was acting as an agent and/or employee of each of the other  
15 Defendants and was acting within the course and scope of said agency and/or  
16 employment with the full knowledge and consent of each of the other Defendants.  
17 Plaintiff is informed and believes that each of the acts and/or omissions complained  
18 of herein was made known to, and ratified by, each of the other Defendants.

19 **FACTUAL ALLEGATIONS**

20 8. Beginning in or around March of 2015 and continuing through  
21 January of 2016, Defendant contacted Plaintiff on Plaintiff’s cellular telephone  
22 numbers ending in -5154, -1080, -1636, -7511, and -0106 in an attempt to solicit  
23 Plaintiff to purchase Defendant’s services.

24 9. Furthermore, from in or around March through June of 2015,  
25 Defendant contacted Plaintiff multiple times on Plaintiff’s residential telephone  
26 number ending in -5903 in an attempt to solicit Plaintiff to purchase Defendant’s  
27 services.

28 10. Defendants used an “automatic telephone dialing system” as defined

1 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

2 11. Defendants contacted or attempted to contact Plaintiff from telephone  
3 numbers belonging to Defendants, including without limitation (520) 230-8448,  
4 (712) 308-7017, (928) 233-7596, (702) 209-0183, (773) 270-8137, (202) 367-  
5 9374, (612) 567-4269, (984) 377-4920, (862) 294-3890, and (417) 800-2353.

6 12. Defendant's calls constituted calls that were not for emergency  
7 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

8 13. Defendant's calls were placed to telephone number assigned to a  
9 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
10 pursuant to 47 U.S.C. § 227(b)(1).

11 14. During all relevant times, Defendant did not possess Plaintiff's "prior  
12 express consent" to receive calls using an automatic telephone dialing system or an  
13 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §  
14 227(b)(1)(A).

15 15. Furthermore, Plaintiff's cellular telephone numbers ending in -5154,  
16 -1080, -1636, -7511, and -0106 have been on the National Do-Not-Call Registry  
17 well over thirty (30) days prior to Defendants' initial calls.

18 16. Also, Plaintiff's residential telephone number ending in -5903 has  
19 been on the National Do-Not-Call Registry well over thirty (30) days prior to  
20 Defendant's initial calls.

21 17. Plaintiff requested that Defendant cease calling his telephone  
22 numbers, including his cellular telephone numbers and residential telephone  
23 number, but Defendant kept calling them.

24 18. Defendants placed multiple calls soliciting its business to Plaintiff on  
25 its cellular telephones beginning in or around March of 2015 and continued until  
26 in or around January of 2016.

27 19. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
28 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.



as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

26. The class concerning the National Do-Not-Call violation (hereafter "The DNC Class") is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, within any twelve-month period, within four years prior to the filing of the complaint.

27. The class concerning the National Do-Not-Call violation following revocation of consent and prior business relationship, to the extent they existed (hereafter "The DNC Revocation Class") is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, after having revoked consent and any prior established business relationship, within any twelve-month period, within four years prior to the filing of the complaint.

28. Plaintiff represents, and is a member of, The ATDS Class, consisting

1 of all persons within the United States who received any solicitation telephone calls  
2 from Defendant to said person's cellular telephone made through the use of any  
3 automatic telephone dialing system or an artificial or prerecorded voice and such  
4 person had not previously not provided their cellular telephone number to  
5 Defendant within the four years prior to the filing of this Complaint.

6 29. Plaintiff represents, and is a member of, The ATDS Revocation Class,  
7 consisting of all persons within the United States who received any  
8 solicitation/telemarketing telephone calls from Defendant to said person's cellular  
9 telephone made through the use of any automatic telephone dialing system or an  
10 artificial or prerecorded voice and such person had revoked any prior express  
11 consent to receive such calls prior to the calls within the four years prior to the  
12 filing of this Complaint.

13 30. Plaintiff represents, and is a member of, The DNC Class, consisting  
14 of all persons within the United States registered on the National Do-Not-Call  
15 Registry for at least 30 days, who had not granted Defendant prior express consent  
16 nor had a prior established business relationship, who received more than one call  
17 made by or on behalf of Defendant that promoted Defendant's products or services,  
18 within any twelve-month period, within four years prior to the filing of the  
19 complaint.

20 31. Plaintiff represents, and is a member of, The DNC Revocation Class,  
21 consisting of all persons within the United States registered on the National Do-  
22 Not-Call Registry for at least 30 days, who received more than one call made by or  
23 on behalf of Defendant that promoted Defendant's products or services, after  
24 having revoked consent and any prior established business relationship, within any  
25 twelve-month period, within four years prior to the filing of the complaint.

26 32. Defendant, their employees and agents are excluded from The  
27 Classes. Plaintiff does not know the number of members in The Classes, but  
28 believes the Classes members number in the thousands, if not more. Thus, this



1 matter should be certified as a Class Action to assist in the expeditious litigation of  
2 the matter.

3 33. The Classes are so numerous that the individual joinder of all of its  
4 members is impractical. While the exact number and identities of The Classes  
5 members are unknown to Plaintiff at this time and can only be ascertained through  
6 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
7 The Classes includes thousands of members. Plaintiff alleges that The Classes  
8 members may be ascertained by the records maintained by Defendant.

9 34. Plaintiff and members of The ATDS Class and The ATDS Revocation  
10 Class were harmed by the acts of Defendant in at least the following ways:  
11 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular  
12 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class  
13 members to incur certain charges or reduced telephone time for which Plaintiff and  
14 ATDS Class and ATDS Revocation Class members had previously paid by having  
15 to retrieve or administer messages left by Defendant during those illegal calls, and  
16 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class  
17 members.

18 35. Common questions of fact and law exist as to all members of The  
19 ATDS Class which predominate over any questions affecting only individual  
20 members of The ATDS Class. These common legal and factual questions, which  
21 do not vary between ATDS Class members, and which may be determined without  
22 reference to the individual circumstances of any ATDS Class members, include,  
23 but are not limited to, the following:

- 24 a. Whether, within the four years prior to the filing of this  
25 Complaint, Defendant made any telemarketing/solicitation call  
26 (other than a call made for emergency purposes or made with  
27 the prior express consent of the called party) to a ATDS Class  
28 member using any automatic telephone dialing system or any



1 artificial or prerecorded voice to any telephone number  
2 assigned to a cellular telephone service;

3 b. Whether Plaintiff and the ATDS Class members were damaged  
4 thereby, and the extent of damages for such violation; and

5 c. Whether Defendant and their agents should be enjoined from  
6 engaging in such conduct in the future.

7 36. As a person that received numerous telemarketing/solicitation calls  
8 from Defendant using an automatic telephone dialing system or an artificial or  
9 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
10 claims that are typical of The ATDS Class.

11 37. Common questions of fact and law exist as to all members of The  
12 ATDS Revocation Class which predominate over any questions affecting only  
13 individual members of The ATDS Revocation Class. These common legal and  
14 factual questions, which do not vary between ATDS Revocation Class members,  
15 and which may be determined without reference to the individual circumstances of  
16 any ATDS Revocation Class members, include, but are not limited to, the  
17 following:

18 a. Whether, within the four years prior to the filing of this  
19 Complaint, Defendant made any telemarketing/solicitation call  
20 (other than a call made for emergency purposes or made with  
21 the prior express consent of the called party) to an ATDS  
22 Revocation Class member, who had revoked any prior express  
23 consent to be called using an ATDS, using any automatic  
24 telephone dialing system or any artificial or prerecorded voice  
25 to any telephone number assigned to a cellular telephone  
26 service;

27 b. Whether Plaintiff and the ATDS Revocation Class members  
28 were damaged thereby, and the extent of damages for such

violation; and

- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

38. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

39. Plaintiff and members of The DNC Class and DNC Revocation Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class and DNC Revocation Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class and DNC Revocation Class members were damaged thereby.

40. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had not granted prior express consent to Defendant and did not have an established business relationship with Defendant;
- b. Whether Defendant obtained prior express written consent to

place solicitation calls to Plaintiff or the DNC Class members' telephones;

c. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and

d. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

41. As a person that received numerous solicitation calls from Defendant within a 12-month period, who had not granted Defendant prior express consent and did not have an established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Class.

42. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Revocation Class. These common legal and factual questions, which do not vary between DNC Revocation Class members, and which may be determined without reference to the individual circumstances of any DNC Revocation Class members, include, but are not limited to, the following:

a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had revoked any prior express consent and any established business relationship with Defendant;

b. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and

c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

43. As a person that received numerous solicitation calls from Defendant within a 12-month period, who, to the extent one existed, had revoked any prior

1 express consent and any established business relationship with Defendant, Plaintiff  
2 is asserting claims that are typical of the DNC Revocation Class.

3 44. Plaintiff will fairly and adequately protect the interests of the members  
4 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
5 class actions.

6 45. A class action is superior to other available methods of fair and  
7 efficient adjudication of this controversy, since individual litigation of the claims  
8 of all Classes members is impracticable. Even if every Classes member could  
9 afford individual litigation, the court system could not. It would be unduly  
10 burdensome to the courts in which individual litigation of numerous issues would  
11 proceed. Individualized litigation would also present the potential for varying,  
12 inconsistent, or contradictory judgments and would magnify the delay and expense  
13 to all parties and to the court system resulting from multiple trials of the same  
14 complex factual issues. By contrast, the conduct of this action as a class action  
15 presents fewer management difficulties, conserves the resources of the parties and  
16 of the court system, and protects the rights of each Classes member.

17 46. The prosecution of separate actions by individual Classes members  
18 would create a risk of adjudications with respect to them that would, as a practical  
19 matter, be dispositive of the interests of the other Classes members not parties to  
20 such adjudications or that would substantially impair or impede the ability of such  
21 non-party Class members to protect their interests.

22 47. Defendant have acted or refused to act in respects generally applicable  
23 to The Classes, thereby making appropriate final and injunctive relief with regard  
24 to the members of the Classes as a whole.

25 ///

26 ///

27 ///

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b).**

**On Behalf of the ATDS Class and ATDS Revocation Class**

48. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-47.

49. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

50. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

51. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

**On Behalf of the ATDS Class and the ATDS Revocation Class**

52. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-47.

53. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

54. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class

1 members are entitled an award of \$1,500.00 in statutory damages, for each and  
2 every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

3 55. Plaintiff and the Class members are also entitled to and seek injunctive  
4 relief prohibiting such conduct in the future.

5 **THIRD CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227(c)**

8 **On Behalf of the DNC Class and the DNC Revocation Class**

9 56. Plaintiff repeats and incorporates by reference into this cause of action  
10 the allegations set forth above at Paragraphs 1-47.

11 57. The foregoing acts and omissions of Defendant constitute numerous  
12 and multiple negligent violations of the TCPA, including but not limited to each  
13 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular  
14 *47 U.S.C. § 227 (c)(5)*.

15 58. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,  
16 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an  
17 award of \$500.00 in statutory damages, for each and every violation, pursuant to  
18 *47 U.S.C. § 227(c)(5)(B)*.

19 59. Plaintiff and the DNC Class and DNC Revocation Class members are  
20 also entitled to and seek injunctive relief prohibiting such conduct in the future.

21 **FOURTH CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
23 **Act**

24 **47 U.S.C. §227 et seq.**

25 **On Behalf of the DNC Class and DNC Revocation Class**

26 60. Plaintiff repeats and incorporates by reference into this cause of action  
27 the allegations set forth above at Paragraphs 1-47.

28 61. The foregoing acts and omissions of Defendant constitute numerous

and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

62. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

63. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

### **FIRST CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

### **SECOND CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.



- Any and all other relief that the Court deems just and proper.

### **THIRD CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

##### **47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

##### **47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

### **JURY DEMAND**

64. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 6th Day of June, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff